



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, DC 20460

DATE: JUL 31 1981

Subject: Procedure for Review of State Primacy Application(UIC)
Ground Water Program Guidance #15 -

From: Alan Levin, Director
State Programs Division

To: Water Division Directors (Regions I - X)
Water Supply Branch Chiefs
UIC Representatives

PURPOSE

The purpose of this guidance is to explain the procedure and the schedule that EPA will follow in reviewing State applications for primacy under the Underground Injection Control (UIC) program.

BACKGROUND

The Safe Drinking Water Act (SDWA) requires that States apply for primacy within 270 days after the UIC regulations become effective. The regulations became effective on July 24, 1980 and the end of the 270 days is April 20, 1981. The SDWA in Sec. 1422(b)(2) also requires the Administrator to approve, disapprove, or approve in part and disapprove in part the State's underground injection control program. The Administrator must make his decision within 90 days of the receipt of the State's application and must publish his final decision in the Federal Register.

40 CFR 123.54 outlines the public participation requirements for a State in seeking UIC program approval, and the procedures to be followed by EPA in the approval process. During the 90 day review period that the EPA is given to approve a State submission, EPA is required to:

1) notify the State within 30 days of receipt on whether the submission is complete or not (Under Sec. 1425 guidance, EPA plans to notify the State within 10 days); 2) publish notice in the Federal Register of the State's application; 3) provide an opportunity for public hearing and allow 30 days for public comment; and 4) approve, disapprove, or approve in part the

State'S submission.

GUIDANCE

1. State Submissions:

B. Prior to submitting an application to the Administrator under 40 CFR Part 123 for approval of a State UIC program, the State shall issue public notice of its intent to adopt a UIC program, and its intent to seek approval from the Environmental Protection Agency. The public notice shall:

- (1) Be circulated to attract wide attention(40 CFR 123.54(a)(1)).
- (2) Indicate where the proposed submission may be reviewed (40 CFR 123-54(a)(2).
- (3) Indicate the cost of purchasing a copy of the submissions (40 CFR 123.54(a)(3).
- (4) Provide for a comment period of not less than 30 days (40 CFR 123.54(a)(4)).
- (5) Schedule and hold a public hearing (40 CFR 123.54(a)(5)).

NOTE: The 30-day periods for public comment and for the waiting period for public hearing can run simultaneously.

- (6) Outline the fundamental aspects of the State program, (40 CFR 123.54(a)(6)).
- (7) Identify a point of contact for further information, (40 CFR 123.54 (a) (7)).

B. Several requirements for public participation need to be clarified.

- (1) First, although 40 CFR Part 25 Public Participation regulations require a 45 day hearing notice, 525.2 (f) Scope states the

following:

"... The requirements for public participation in State Hazardous Waste Programs, Dredge and Fill Permit Programs, Underground Injection Control Programs and NPDES permit programs are found in Part 123 of this chapter. These regulations embody the substantive requirements of this part.'

Therefore, the State as well as the EPA is required only to provide a 30-day public notice period before any such hearing.

- (2) Second, the wording of 40 CFR 123.54 (a)(5) is intended to mean that the State will hold a public hearing in the State for the purpose of giving opportunity to the State's public to comment on the progra submission.
- (3) Third, while public hearing records must be left open for 10 days under the EPA Public Participation Policy (Federal Register Vol. 46, No. 12, Mon ay, January 19, 1981) the Consolidated Regulations have not been amended to incorporate this requirement. Under the Policy A. Scope (page 5740) the Policy states:

"When covered activities are governed by EPA regulations or program guidance, the provisions of the Policy shall be included at appropriate points in these documents. Before those changes are made, the provisions of the existing regulation or program guidance shall govern."

Therefore, for the purpose of the State approval hearing, EPA will not be placing this additional requirement on the States. It is recommended that States indicate in their public notice and at the close, of the public hearing that EPA wi 'll offer a 30 day public comment period and may hold a public hearing on the State's submission during EPA's 90-day review period. in addition, if the hearing record is closed

immediately after the public hearing, comments received within the following 10 days should be forwarded to EPA for consideration during its comment period.

- C. The State's submission must contain certain elements to be considered complete (§123.3). These elements are:
- (1) A letter from the Governor requesting program approval.
 - (2) A statement from the State Attorney General demonstrating that the State has the necessary legal authorities (40 CFR 123.5).
 - (3) A full description of the program (40 CFR 123.4).
 - (4) Copies of the relevant State regulations, statutes, and administrative procedures.
 - (5) A memorandum of agreement between the State and EPA which details the respective rights and responsibilities (e.g. Federal oversight) in implementing a State UIC program (40 CFR 123.6).
 - (6) A showing of the State public participation and information activities prior to submission (40 CFR 123-54(a) and (b)).

The Regional offices should encourage the States to submit their proposed program submissions to EPA for preliminary review at the earliest possible time during the development of the required submissions; i.e. MOAT AG Statement, etc. This will allow the State to develop documents which are likely to be more complete and acceptable once an application is officially made. The Regional office shall make every attempt to follow the early development of the State's submission to guide it in what is required for an acceptable program. The Regional office also should work closely with the office of Regional Counsel during development of the required submission. Furthermore, it is

recommended that the Regional office form a review team with the Water Supply Branch as lead to review State primacy applications (See the recommendation under Day 10 for the organization of this team).

- D. Any State which has Class II wells may apply for primacy for its Class II UIC program either: (1) under the regulations at 40 CFR Parts 122, 123, 124 and 146; or (2) under Sec. 1425 of the SDWA (Pub. L. 96-502).

If a State is submitting a program for Class II wells under Sec. 1425 of the SDWA, the requirements of submission are somewhat changed from the requirements under 40 CFR Parts 122p 123, 124 and 146. However, as an alternative demonstration, Sec. 1425 may be used @l for the Class II portion of the application. The portion of the program covering types of practices other than Class II will have to meet the requirements of 40 CFR Parts 122, 123, 124, and 146.

Under Sec. 1425 (Pub. L. 96-502) of the SDWA the State may but need not, provide an opportunity for public hearing or comments prior to submitting an application to EPA. However, if the State has not provided this opportunity, EPA will hold at least one public hearing in the State. EPA intends to determine within 10 working days of the receipt of a State application whether the application is complete or not and notify the State in writing. If the application is found to be incomplete it will be returned to the State with specific requests for additional material or changes.

- E. Also a State program submitted under Sec. 1425 should contain the following elements:
- (1) a letter from the Governor of the State requesting program approval;
 - (2) a description of the program describing how the State intends to carry out its responsibilities;

- (3) a statement of legal authority to assure EPA that the State has the legal authority to carry out the program described;
 - (4) copies of the pertinent statutes and regulations covering the regulation of underground injection;
 - (5) copies of the pertinent State forms used in administering the program;
 - (6) a signed copy of the Memorandum of Agreement which sets forth the terms under which the State will carry out the described program and EPA will exercise its oversight responsibility.
- F. A State need not wait to submit its application for EPA approval until it has a program for all classes of wells. EPA will consider partial applications for primacy if such submissions for which approval is sought covers:
- (1) All activities of a regulatory program for a particular class or classes of injection wells, even if the class or classes involve the jurisdiction of more than one State agency; or,
 - (2) All activities of a regulatory program for all the classes or types of wells within the jurisdiction of a single State agency. The activities of a regulatory program which must be included in a submission are provisions for permitting, inspection and surveillance, and enforcement.
- G. All partial applications are grant-eligible activities. Under Sec. 1443 (as amended under Pub. L. 96-502), States may receive grant support until July 1982. After July 1982, the State must have achieved primacy for all classes and types of wells in the State in order for grant eligibility to continue.

2. EPA Review:

- A. The following guidance is outlined to correspond to the 90 days allowed EPA in reviewing a State

application. Figure 1 is a diagram of this 90-day review period that is allowed EPA in approving a State submission. The days' given for each activity are not meant to be restrictive, but only as an aid for completing the process within the time allocated. However, some time periods are mandatory; i.e. 90-day review period, unless officially extended, and the public comment period;

B. The 90-day statutory review period in which EPA has to review the State's program submission has several important requirements. These are:

- (1) EPA intends to determine whether the State program submission is complete within 30 days of the receipt of the submission and shall notify the State of its finding.

NOTE: Under Section 1425 guidance, the EPA intends to determine within 10 working days whether the submission is complete.

- (2) The statutory review period begins on the date the complete submission is received by the EPA. If EPA finds that the State's submission is incomplete, the statutory review period shall begin on the date when all necessary information is received by the EPA, not on the date the Agency determines the submission complete.

NOTE: Under Sec. 1425 guidance: if an application @as been found to be incomplete and the State insists that EPA proceed with its review of the application as submitted, the review period will begin on the date that EPA receives the State's request to proceed in writing.

- (3) EPA shall not begin the statutory review period when the State's submission is incomplete. If the submission is materially changed, the statutory review period shall begin upon receipt of a revised and complete submission.

C. After determining that a State's submission is

complete, the Administrator shall issue public notice of the submission in the Federal Register. The public notice shall be in accordance with paragraph A., number one (1) through five (5) of the State submission section above. Additionally, the notice may require persons to file a request to present testimony at the hearing, which is optional, depending on whether sufficient public interest is demonstrated (40 CFR 123.54(c)(1)).

After the Administrator makes his determination on the State's program submission, he shall give notice of his decision in the Federal Register and circulate the public notice (in newspapers, mailing lists) in accordance with 5123.54(a)(1). The Regional office must also prepare and provide to interested parties (those who testified at the public hearing, and to others upon request) a responsiveness summary, which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and explains the Agency's response to these comments.

All printing, mailing, and public participation costs associated with EPA's process of approving a State's submission for the UIC program are ' to be solely the responsibility of the Regional offices. These costs include: the public notices in the Federal Register and in the largest newspapers in the State; the cost of public hearings held by the EPA; the costs associated with any mailings to persons on mailing lists; and the costs of preparing and mailing responsiveness summaries. These costs apply to both the notice of a complete submission and the notice of the Administrator's decision.

Adjustments for programs submitted under Sec. 1425 are directly noted where applicable in the following schedule.

PROCESS

Day 1-10 Receive Primacy Application from the State.

Determine whether the submission is complete.

To determine whether a State submission is complete one must determine whether all the elements of submission are included, properly signed, as stringent as the Federal requirements, etc.. In turn, these submitted elements must be looked at individually and determined to cover all points of an acceptable program. For example, the Attorney General's Statement must contain the necessary documentation that the State has the authority to issue permits and set conditions on those permits. As another example, the program description must include schedules for issuing permits to all injection wells which are required to have permits, and to establish an inventory of Class V wells. Refer to individual guidances for more detailed information. See paragraph one (1) under State Submission for elements of a program submission.

Begin to make arrangements in the Region for tentative hearing date, location of submission for public inspection, press releases, preparations for public hearing, stenographic services, public comment and public hearing procedures, etc.

NOTE: Under Sec. 1425 guidance, the EPA is required to determine within 10 days whether the State's submission is complete.

Day 10 Send Notice to Federal Register indicating the State's submission is complete.

Send copy(s) of the complete State's submission to EPA Headquarters.

Notify the State that the submission is complete.

NOTE: EPA is given 30 days to review the State's submission to determine its completeness, and to notify the State of its decision. However, the EPA should attempt to determine if the submission is indeed complete in all respects as soon as possible to start the required times for public comment and public notice for hearings.

NOTE: Under Sec. 1425 guidance: if an application has been found to be incomplete and the State insists that EPA proceed with its review of the application as submitted, the review period will begin on the date that EPA receives the State's request to proceed in writing.

Federal Register notices to be published and all copies of the State's submission to be submitted to EPA Headquarters should be addressed to:

Mr. Phil Tate
U.S., Environmental Protection Agency
Office of Drinking Water
State Programs Division (WH-550)
401 M Street, SW
Washington, DC 20460
(202) 426-8290

(Express mail service is recommended)

It is recommended that the Regional Office set up a review team to review the State's submission, and to appoint the Water Supply Branch the lead in establishing the procedures for the review process. The application review team should include representatives from the offices of the Regional Counsel, Solid Waste, Enforcement, and other divisions which have direct responsibility in the UIC regulatory program. The following list is an example of this structure. Headquarters has been set up to review applications as shown below.

REGION: Water Supply Branch (WSB)
Solid Waste Branch
Enforcement Branch
Regional Counsel
Permits Branch

HEADQUARTERS: Ground Water Protection Branch (to Phil Tate for distribution)
Office of Solid Waste
Office of General Counsel
Office of Water Enforcement
Enforcement Division
Permits Division

Day 10-50 EPA Regional and Headquarters Review.

It is presumed that discussions will take place between the Regional and Headquarters staffs during this period.

Day 20 Public notice of the complete submission appears in the Federal Register.

The public notice shall be in accordance with EPA review procedures in 40 CFR 123.54(c) and (d). This Notice shall indicate that a public hearing will be held if sufficient interest is expressed, and that a 30-day comment period will be held. All information pertaining to the public hearing, such as date, time and location of the hearing should be included.

Day 20-50 30-Day public comment period.

The WSB should remain . in close contact with the State during this entire time, and all changes that can be made should be discussed and revised during this time.

Day 30 Regional Office (WSB) notifies the State that the State submission is complete (if not done previously at Day 10).

Day 50 Regional office (WSB) determines if sufficient interest exists to warrant a public hearing on the State's submission.

Notify EPA Headquarters of Public Hearing.

NOTE: If the State applying under Sec. 1425 has not held a public hearing, EPA will hold a public hearing in the applying State.

Day 52 Obtain the concurrence/conditional concurrence of the State's application from EPA Headquarters.

EPA Headquarters shall consolidate comments based on the State's submission at this point and send them to the Regional office.

Prepare necessary briefing documentation and transmittal package for Regional Administrator.

Day 55 Hold a Public Hearing (if applicable).
(Headquarters shall be invited)

Day 55-65 Consolidate all comments from EPA, the public comment period and the public hearing.

Send all comments to the State.

The WSB and, the State should make as many changes to the submission as soon as appropriate during the public comment period, Day 20-50. Close contact must remain between the State and EPA to do as much of the changes needed as soon as possible.

Day 65-85 Hold meeting with State to revise the State's application, if necessary.

Revise the State's submission to reflect the substantive changes from all parties.

Notify EPA Headquarters of significant meetings between the Region and the State.

Prepare Responsiveness Summary (40 CFR 123.54(d))

The meeting with the State should include all responsible parties for implementing the State's UIC program. The purpose of this meeting is to determine whether the revisions (if any) based on the public comment, public hearing, and the EPA review period can be made during the remainder of the review period in time sufficient for the Regional Administrator's determination.

If it is determined that sufficient time does not exist to make the necessary revisions in the State's submission, EPA and the State shall mutually agree on a reasonable extension of the statutory review period.

Day 85 Obtain Concurrence from EPA Headquarters on Final package.

Day 88 Forward State's submission package to Regional Administrator for approval (See Special instructions, pg. 14).

Day 90 Regional Administrator makes his decision on State's application.

NOTE: Regional Administrator must obtain prior concurrence from EPA Headquarters.

Notify the State of the Regional Administrator's decision.

Send notice of determination to Federal Register.

Publish the notice of the rule in accordance with 4UCFR 123.54(a)(1) --- circulated to attract wide attention; i.e* newspapers mailing lists, etc.

If the Regional Administrator decides not to approve the State program or to approve only in part, the notice shall include a concise statement of the reasons for that determination.

Send Responsiveness Summary to those that testified at public hearings and to others on request.

IMPLEMENTATION

The Water Supply Branch (WSB) Chief shall use this guidance in reviewing the State UIC program submission in accordance with established Regional review procedures. The activities listed during the 90 day period do not exhaust all the activities necessary for the Regional Office to accomplish during its review of the State submission. However, this guidance does establish the major milestones that need to be accomplished during this 90-day review period.

EPA Headquarters suggests that the Regional office invite and give adequate notice to Headquarters to attend the meetings with the State concerning the comments from the public comment period, the public hearing, and EPA review (both Regional and Headquarters review). EPA Headquarters should also be notified of matters of discussion between the State and the Region that are of national significance, or in which the results would be of importance to the program as a whole.

If during the meeting with the State it is determined that the statutory review period must be extended, the Regional Office shall by agreement with the State set interim dates, schedules, and reviews of the revised submission. The length of the extensions shall be by mutual agreement between EPA and the State. EPA Headquarters must be notified of all actions concerning extensions of the review period. Extensions are for the purpose of the State needing additional time to make necessary revisions to the submission.

The WSB Chief should also keep EPA Headquarters informed of: the receipt and status of UIC program submissions; the scheduled dates for public hearings; significant meetings between the State and the Region; and other primacy actions. The Regional Administrator shall

also comply with all limitations as defined in the delegation of authority for the UIC program.

SPECIAL INSTRUCTIONS

Sec. 1422(b)(2) of the SDWA states that within ninety days after the State's application, the Administrator shall either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program. The EPA Headquarters intends to delegate this authority to the Regional Administrator (RA) with prior concurrence by EPA Headquarters. Until this delegation becomes effective, program approvals can only be made by the Administrator.

In the interim, all requests for approval shall be processed by the Regional Water Supply Branch in accordance with this guidance, excluding the procedure delineated at Day 85.

Instead, the Regional Water Supply Branch Chief shall forward the necessary briefing documents and transmittal package to the EPA Headquarters for final approval by the EPA Administrator in accordance with normal Regional clearance procedures. ODW will be responsible for obtaining the Administrator's approval.

All documents sent to Headquarters shall be sent to Mr. Phil Tate for action.

FILING INSTRUCTIONS

This guidance should be filed as Ground Water Program Guidance No. 15.

ACTION RESPONSIBILITY

For further information on this guidance contact:

A. Roger Anzzolin
U.S. , EPA
Office of Drinking Water (WH-550)
401 M Street, SW
Washington, DC 20460
(202) 426-3934

